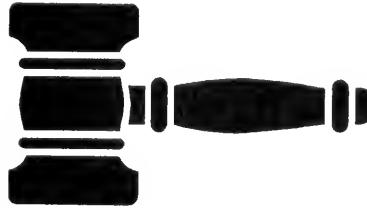


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Montana POLICE
COMMISIONERS

POLICE
COMMISSION
HANDBOOK

Montana POLICE
COMMISIONERS

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Manual for Montana police commissioners

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**MANUAL
FOR
MONTANA
POLICE
COMMISSIONERS**

Second Edition - 1992

Originally Prepared for the Montana Board of Crime Control

Revised by the Montana Attorney General's Office

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INTRODUCTION

Police Commissions were established by Montana law to assist mayors or other chief executives of cities and towns in making decisions concerning the operation of local police departments. The statutes that govern Police Commissions are Sections 7-32-4151 through 7-32-4164 of the Montana Code Annotated (MCA) which are found in Part VII of this handbook.

One of the most important functions of a Police Commission is to provide a forum that is separate and independent from the police department, so that a citizen's complaint against a member of the police department may receive a fair and impartial hearing. The Montana Supreme Court has described a Police Commission as a "quasi-judicial body." This is because the commission is not obligated by all of the rules governing courts, but still has many of a court's powers.

The purpose of this handbook is to acquaint Police Commissioners with the powers and recommended procedures of the Commission as well as to explain the duties of a Police Commissioner.

Relevant Montana statutes as well as a summary of various interpretations by the Montana Supreme Court of those statutes are set forth at the end of this handbook and are the basis for the guidelines contained and the procedures recommended.

PART I
THE POLICE COMMISSION
ITS PURPOSE AND ORGANIZATION

A. PURPOSE.

Police Commissions were authorized by the Montana legislature to assist Mayors¹ with the operation of police departments. A Police Commission is very limited in its powers and duties. It is not authorized to run a police department or even to suggest what policies should be followed by the department. Neither is the Police Commission a branch of the police department nor is it subject in any way to the control of the police department. Some state laws refer to the power of the "city council or commission" over the police department, but, the word "commission" in those provisions does not refer to the Police Commission but rather to the local governing body such as a city commission.

The Police Commission is limited by state law to very specific duties which are as follows:

1. to examine all applicants for a police force (§ 7-32-4154, MCA);
2. to serve as an appeal board for an officer who is dissatisfied with a temporary suspension ordered by the chief of police or by the mayor (§ 7-32-4163, MCA);
3. to hear, try, and decide all charges brought against a police officer (§ 7-32-4155, MCA).

A Police Commission examines all police force applicants to ensure the applicants are qualified and able to carry out the duties of police officers.

When deciding charges against a police officer, a Police Commission acts much like that of a judge and jury. Its purpose is to make certain that there exists an independent and impartial forum where an ordinary citizen can bring a complaint against a police officer, where the complaint will be fairly and fully heard, and where a fair decision will be reached.

Proper performance of the duties of a Police Commission enhances the respect the public has for police officers and for our system of justice by helping to remove suspicion that the police protect each other from outside complaints.

B. MEMBERSHIP AND ELECTION OF OFFICERS.

A Police Commission must be appointed in every city or town that has 3 or more full-time law enforcement officers. It is optional in other places (§7-32-4151, MCA).

A Police Commission consists of three residents who serve three year terms and who must be confirmed by the city council or commission (§7-32-4151, MCA). One member is to be appointed by the mayor at the first regular meeting of the city council or commission in May of each year (§7-32-4152, MCA). However, a member whose term has expired may continue to serve on the commission for the purpose of making a decision in a case already heard by that member. (§7-32-4152(1), MCA).

¹ The term "Mayor" is intended to include a city manager, city commissioner, or any other name or designation used to identify the chief executive of any city or town.

Each person appointed to the Police Commission must be a United States citizen and meet the qualifications for municipal office adopted by the city or town. (§§7-32-4151, 7-4-4104, MCA). Compensation of members is not to exceed \$10 per day or more than \$50 in any one month. (§7-32-4152(2), MCA).

Although not required by law, the Police Commission should select one member to serve as chair to preside over all meetings and hearings. A vice-chair should also be selected as well as a secretary who is responsible for the taking of the minutes at all meetings and hearings. The secretary should also be responsible for the keeping of the Police Commission records and files. All records and files should be kept at the City Hall in the office of either the city clerk or the mayor.

Sections 7-32-4107 and 7-32-4154, MCA, grant the Police Commissioners power to make rules governing proceedings before the Police Commission. Most of the information in this handbook concerns procedures that are required by state law; however, there are some procedures, such as affording notice to any person who wishes to present a claim against a peace officer, that could properly be part of the rules adopted by the Police Commission. To make such procedures part of the Police Commission "rules," it is recommended that the entire handbook be adopted as part of the Commission's rules.

PART II

DUTY TO EXAMINE APPLICANTS FOR POLICE FORCE

A. INTRODUCTION.

One of the duties that the Police Commission is required to perform is the examination of applicants for vacancies that exist in the police department. (§7-32-4154, MCA).

State law provides that the Police Commission must examine all applications referred by the mayor to the Commission. No one, not even the Police Commission, can compel a mayor to forward an application to the Commission. The mayor has the right to screen applicants and reject those who are believed to be unqualified.

Once an application is referred by the mayor, the Police Commission must examine the applicant as to age, legal, mental, moral, and physical qualifications and ability to fill the office as a member of the police force. Except for a few matters mentioned below, state law does not specify how the examination should be conducted or under what particular circumstances an applicant should be considered suitable. These are matters for the Police Commission to decide, and, it may do so by adopting rules, subject to the approval of the mayor. The basic requirements for all applicants which are specified by state law include:

1. age (not less than 18 years of age or more than 35 years of age with certain exceptions as set forth in section 7-32-4112, MCA);
2. United States citizenship (§7-32-4112, MCA);
3. minimum qualifying standards for employment promulgated by the Montana Board of Crime Control (7-32-303, 7-32-4112, MCA);
4. state residency requirements (7-32-301, 7-32-302, MCA);
5. special requirements for applicants who are seeking reinstatement (§7-32-4110, MCA).

NOTE: All of these statutes are quoted in full in Part VII of this handbook.

Every applicant deemed qualified by the Police Commission must be issued a certificate to that effect. (§7-32-4108(2), MCA). A sample certificate form is included in Part VI of this handbook.

In addition to the requirements of state law for police applicants, many city ordinances impose other requirements which must be followed by the Police Commission. A city ordinance may not change state law, but the ordinance may expand on state law and cover matters not included in or inconsistent with state law. Legal advice should be sought before suggesting additional requirements for police applicants, such as local residency.

How should the examination of applicants be conducted? First of all, it is necessary that the applicant be present during the examination. The applicant should be given an opportunity to respond to any information about the applicant received by the Commission.

Because an applicant can be discharged for false statements made to the Commission concerning his or her qualifications (§7-32-4111, MCA), some Police Commissions record the interview, although it is not required by law. Others require written answers be provided, either on the application or as part of a written test.

PART III

DUTY TO DETERMINE ELIGIBILITY OF AN OFFICER FOR DISABILITY RETIREMENT

It may be necessary for the Police Commission to consider whether or not an officer is disabled in the active discharge of his duties. (§19-10-402, MCA). This responsibility arises either upon request of the officer or the chief executive of the municipality (§7-32-4135, MCA), or when a charge is filed against an officer alleging that he or she is incapacitated due to disabilities. (§7-32-4155, MCA).

When a request is filed by either the officer or the chief executive of a city, the Police Commission or the city council is given the authority to determine whether the disability is of such character as to impair the officer's ability to discharge his or her duties. If so, the officer is to be placed on the retired list of the city or town. Written evidence should be presented with the request. The evidence could consist of medical reports and reports from the chief of police. However, if the Police Commission has any questions regarding the request for disability retirement, an informal hearing should be scheduled to allow all parties to explain the reports or offer additional information. If the request is not made by the officer involved, due process of law requires that the officer be given every opportunity to respond to the allegations of disability.

When the disability question arises by virtue of charges being filed against an officer, the procedure to be followed is as set out in Part V of this manual.

Whenever a disability retirement question is presented to the Police Commission, it should consider the question of whether or not the officer could be assigned to light duty or transferred to another agency of the municipality as provided for under Section 7-32-4136, MCA.

PART IV
DUTY TO SERVE AS AN APPEAL BOARD FOR OFFICERS

Section 7-32-4163, MCA, states:

7-32-4163. *Temporary suspensions.* *The mayor, or chief of police, subject to the approval of the mayor, shall have the power in all cases to suspend a policeman or any officer for a period of not exceeding 10 days in any one month, such suspension to be with or without pay as the order of suspension may determine. Any officer suspended, with or without pay, is entitled to appeal such suspension to the police commission.*

A temporary suspension is the only "order" that the Police Commission can consider on appeal.

An officer making an appeal to the Police Commission should be required to set forth, in writing, the reasons for the appeal. The Police Commission should then examine the request to see if the alleged facts indicate that there may be an abuse of discretion on the part of the mayor or chief of police. If the request does not contain facts that allege such an abuse, the appeal should be dismissed. If the Commission believes that the mayor or the chief of police has abused his or her discretion, a hearing should be scheduled. The mayor and the chief of police should each be served with a copy of the written appeal so that they have an opportunity to respond. The Police Commission should not reverse the decision of the mayor or chief of police unless it satisfactorily appears that discretion was abused in ordering the temporary suspension.

PART V
DUTY TO HEAR AND DECIDE CHARGES AGAINST A POLICE OFFICER

Section 7-32-4155, MCA, states:

7-32-4155. Role of police commission in hearing and deciding charges against policemen. (1) The police commission shall have the jurisdiction and it shall be its duty to hear, try, and decide all charges brought by any person or persons against any member or officer of the police department, including any charge that such member or officer:

(a) is incompetent or has become incapacitated, by age, disease, or otherwise, to discharge the duties of his office;

(b) has been guilty of neglect of duty, of misconduct in his office, or of conduct unbecoming a police officer;

(c) has been found guilty of any crime; or

(d) whose conduct has been such as to bring reproach upon the police force.

(2) It is the duty of the police commission, at the time set for hearing a charge against a police officer, to forthwith proceed to hear, try, and determine the charge according to the rules of evidence applicable to courts of record in the state.

A police officer can be charged with conduct that, although not a crime, may be improper because of the trust imposed in the officer. Misconduct has been defined by the Montana Supreme Court to include "any act which is contrary to justice, honesty, principle, or good morals." State ex. rel. Wynne v. Examining and Trial Board, 117 P. 77, 78 (1911). The conduct should arise out of the duties or responsibilities of the office. State v. Judicial Standards Commission, 643 P. 2d 210, 222 (1982).

A. GENERAL RULES

Section 7-32-4155(2), MCA, requires the Police Commission to hear a charge "according to the rules of evidence applicable to courts of record in the state." These rules of evidence are used by all Montana courts. The rules are found in Title 26, Chapters 1 and 10, MCA. They are meant to ensure a fair trial and the pursuit of the truth. The rules of evidence are based on common sense and they allow the consideration of only those matters that are actually relevant to the charges brought against the officer. Many of the rules are mentioned in this manual.

City law is applicable to a Police Commission hearing. If city law conflicts with state law, state law must be followed, although city law may explain or expand upon state law, it may not change it. The Montana Administrative Procedure Act does not apply to a city agency like the Police Commission unless the city has adopted the Act as local law.

An orderly hearing requires that one person be in charge. The chair responds to any objections to the evidence and keeps the proceeding on course. Another alternative, if there is a lawyer on the commission, is to designate that member as the one responsible for ruling on evidence questions.

The chair has the power to issue subpoenas, to compel witnesses to attend the hearing, and to hold in contempt those who do not obey a subpoena.

The holding of an orderly hearing and the handling of the hearing requires proper groundwork. The first step in any hearing is to have the position of each of the parties clearly defined. That is the reason section 7-32-4156, MCA, requires that charges against an officer be made in writing. The Police Commission should require that all charges against an officer give all necessary information, and that such information on its face allege improper conduct on the part of the officer. Remember that the law sets forth the grounds on which charges may be brought. See section 7-32-4155(1)(a) through (d), MCA, above. If the written charge does not show such misconduct, the Police Commission should prepare a written order of dismissal of the charges for the failure to state a valid charge against an officer. If the charges are dismissed, no hearing is necessary. The Police Commission, like a court, is not obligated to provide a forum merely for the purpose of allowing one person to state his dislike for or disagreement with a police officer.

B. PROCEDURE FOR BRINGING CHARGES AGAINST A POLICE OFFICER

A citizen with a complaint against a police officer may be afraid to go to the police station to make such a complaint. Therefore, the Police Commission should provide for filing such charges at the office of the city clerk or mayor, as well as at the police station. Some instructions should be given to the person making the charge. For this reason a form has been prepared and is recommended for use by all Police Commissions. The form, which is contained in Part VI of this handbook, gives information concerning the manner in which the complaint will be handled by the Police Commission, and thus it also serves as instructions for the Police Commission.

C. NOTICE TO THE ACCUSED OFFICER

As soon as charges are filed against a police officer, the city employee receiving the complaint should immediately notify the Police Commission that charges have been filed. It then becomes the duty of the Police Commission pursuant to Section 7-32-4156, MCA, to serve a copy of the complaint on the accused officer at least 15 days before the time fixed for the hearing of the charge.

The statute says that a copy of the charge must be "served" on the officer at least 15 days before the time of the hearing. Service may be accomplished by mail or in person, under the conditions set forth in Title 25, Chapter 19, MCA. (Rule 4D, Montana Rules of Civil Procedure.) There should be a certificate showing that service was accomplished. A form for such certificate is included in Part VI of this handbook.

Notice of the charges should include the time and place of the hearing. The notice of hearing should do more than merely indicate the time and place of the hearing. It should require the officer to file a written response at least 5 days before the date set for the hearing. There are many reasons for this requirement: First, the officer may admit the allegations set forth in the charge, in which case a hearing on the facts will not be necessary. Second, the officer may admit to the acts complained of and then set forth other facts that might justify his conduct, in which case the required proof at the hearing will be limited to the question of whether the officer's conduct was justified. Third, he may deny the commission of the acts charged, in which case a full hearing on the facts will be necessary to determine the truth. The law permits the accused officer to be represented by an attorney, and a written response will usually indicate whether or not an attorney will be present at the hearing.

If the written response filed by the officer shows that a hearing will be necessary, a copy of that response should be made available to the complaining party. A form for the notice of hearing is included in Part VI of this handbook.

D. PLACE AND TIME OF HEARING

Because it is so important to demonstrate that the Police Commission is not a part of the police department, the hearing should never be held in the police department quarters, but in some other location such as the city court room or the city council chambers.

The only Montana Code provision relating to the time of the hearing is Section 7-32-4156, MCA, which provides that the accused officer must be served a copy of the charge at least 15 days before the hearing. At the request of the accused officer, the hearing may be set at an earlier date. That permission or request should be in writing and should be made a part of the record of the proceedings.

E. CONTINUANCE OF HEARING

Whenever one party asks for a continuance (a postponement of the hearing), it is within the discretion of the Police Commission to grant the request. The request should be for a valid reason and should be in writing. It is the responsibility of the Police Commission to notify all parties of any continuance.

F. RIGHTS OF THE ACCUSED POLICE OFFICER

The accused officer has all the rights of any person accused of a crime or wrongdoing. That includes the right to be advised of the charges, the right to meet face-to-face the witnesses against him, the right to be represented by counsel, the right to call witnesses on his behalf, the right for time to prepare for the hearing, the right to refuse to testify without the refusal being considered an admission of wrongdoing, and the right to require that the charges be proven by competent evidence and to the satisfaction of the Police Commission. Section 7-32-4157, MCA, specifically gives the officer the right to be represented by an attorney at the hearing.

The accused officer has the right to be present at the hearing, but this does not mean that the hearing cannot be held if he is not present. The officer may waive the right to appear. All that is required is that he receive proper notice of the hearing and that he be notified of the charges and his right to appear and contest them. The hearing can proceed in his absence but the individual who has filed the charges will still have the burden of proving the charges to the satisfaction of the Police Commission. The officer is presumed to be innocent and every presumption of law is in favor of his innocence.

G. PROVING THE CHARGES

The Montana Code provisions do not set forth the standard of proof required for the Police Commission to make a decision. The courts have held that a Police Commission decision must be supported by "substantial evidence" before charges can be proven. The use of the word "substantial" indicates that more than a slight preponderance but less than proof beyond a reasonable doubt must be shown before an officer may be found guilty of the charges. If the charges amount to a violation of the criminal law, then the Police Commission must find the charges proven beyond a reasonable doubt.

The party making the complaint must prove the charges, and therefore, we say that party has the burden of proof. That means that if the Police Commission believes each side equally, the complaining party must lose, or to put in another way, if neither side introduces any evidence the complaining party must lose.

The Constitution prohibits the placing of any burden on the officer to disprove the charges, and the officer's failure to testify cannot be used as evidence of guilt.

H. PUBLIC HEARING

Section 7-32-4158, MCA, requires that the hearing be open to the public. There is one exception to the rule that no one can be excluded from the hearing. Under the rules of evidence either party in a criminal type action can ask to have the witnesses excluded from the trial until they are called to testify. The Police Commission should observe this rule of evidence. Of course, it may be necessary for the chief investigating officer to be present at all times and the complaining party and the accused officer cannot be excluded from the hearing.

I. WITNESSES

Evidence is offered during the hearing through witnesses who are called to testify. A witness is ordered to attend a hearing by a subpoena. Section 7-32-4159, MCA, grants the Police Commission the power to issue a subpoena. The subpoena should be signed by the chair of the Police Commission. A subpoena form is included in Part VI of this handbook.

Either the complaining party or the accused officer has the right to ask for a witness to be subpoenaed. The Police Commission need not issue a subpoena just because a party asks for one. The Police Commission can inquire into the need for the witness and the purpose to be served by the testimony to be given by the witness. The witness may not really be essential to the hearing. This is especially true for witnesses who do not reside in the city, or for "character witnesses" who are called to testify on behalf of the character of one of the parties. A party may want a blank subpoena, which is not directed to any named person. The Police Commission does not have to issue such a subpoena. Either party in the action should have the right to know the names of the witnesses subpoenaed by the other.

When a witness has certain documents that will be relevant at the hearing, that witness can be compelled to bring those documents. This is done with a "subpoena duces tecum". A form is included in Part VI of this handbook.

The statute gives the Police Commission the power to punish a person for refusal to obey a subpoena. The Police Commission is given the same power to punish as is given to a District Judge. (See Title 3, Chapter 1, Part 5, MCA.) When a person does not obey the command of a subpoena, it is necessary to prepare "charges" in about the same form as a "complaint" and have the person brought before the Police Commission to explain the contempt charges. If the disobedience is not explained to the satisfaction of the Police Commission, the person may be punished by jail time not to exceed 5 days or a fine not to exceed \$500, or both. A judgment must be prepared in about the same form as the "final order or decision" mentioned later in this handbook. Caution should be exercised with contempt charges. As contempt is a serious matter, the Police Commission should ask the city attorney to examine the charges and prepare the necessary paper work.

A witness at a Police Commission hearing should have the same right to fees and mileage as does a witness called to city court. A witness may demand the fees in advance and if they are not paid, that witness cannot be held in contempt. (See Title 26, Chapter 2, Part 5, MCA).

The examination of a witness in court is done through a question-and-answer process, and both the questions and answers are restricted to relevant matters. When an attorney is not present, it is best just to let the witness tell his or her story. If the witness begins to ramble, the chair may remind the witness to adhere to testimony that is relevant to the charges being heard.

Witnesses should be required to testify under oath. A sample oath is as follows:

Do you solemnly swear that the testimony you are about to give at this hearing is the truth, the whole truth, and nothing but the truth?

A witness is entitled to be treated in a civil manner when on the witness stand. The Police Commission should require proper conduct on the part of any person cross-examining the witness.

A witness cannot be required to relate the contents of a privileged communication, such as a conversation the witness has had with a husband or wife, attorney or client, clergyman or parishioner. A witness has a constitutional right to refuse to answer a question on the grounds that the answer might require self-incrimination. However, once an accused officer takes the witness stand, he does not have the right to refuse to answer a question that might incriminate him. His right is limited to a refusal to take the witness stand at all.

J. RECORD OF TESTIMONY

The law does not require that a stenographic record or tape of the trial testimony be made. However, the Montana Supreme Court in a case entitled City of Helena v. District Court, 530, P.2d, 464, 166 Mont. 74 (1975) urged all Police Commissions to have some form of record made of the testimony. This is because section 7-32-4164, MCA, provides for an appeal of the facts and the law to the District Court and, if necessary, to the Montana Supreme Court.

K. JURY

An accused officer is not entitled to a jury trial before the Police Commission, nor is he entitled to a jury trial if the case is appealed to the District Court.

L. PARTICIPATION IN THE FINAL DECISION

Section 7-32-4152, MCA, permits a member of the Police Commission whose term has expired to continue to serve in a case where the member participated in the hearing. A Police Commission member who is absent during part of the hearing, however, may not take part in the making of the final decision.

The Montana Supreme Court has held that members of a Police Commission who had been appointed by the mayor but not yet confirmed by the city council were the "de facto Police Commission" and actions they had taken in holding a hearing were valid. The Supreme Court also held that Police Commission members whose terms have expired may remain in office until their successors are appointed and qualified.

There may be a request to disqualify a member of the Police Commission from participating in a particular case. However, a Police Commissioner need not be removed from a case unless he is one of the parties involved in the matter or otherwise violates local conflict of interest rules.

M. DOUBLE JEOPARDY

A police officer may be suspended from duty pending a hearing before the Police Commission. An officer may also be convicted of a criminal charge and subsequently disciplined by the Police Commission without there being a violation of double jeopardy.

N. THE FINAL WRITTEN DECISION

The Police Commission's final decision should be rendered after the hearing on the charges has been held. The decision should be put in writing. The decision should start out with a statement of the charges filed, the time and place for the hearing, the fact that the accused officer was served with notice of the charges and the hearing date, and the fact that the hearing was held.

The decision should also include findings of fact. This means that the written decision must contain a recitation of the facts which the Police Commission believes to be true in relation to the charge. These findings of fact are very important, for on appeal or review they will be examined to see if they support the final decision under applicable law.

Next, the Commission's decision should include conclusions of law. Possible conclusions of law are as follows:

1. The charges are unfounded, i.e. a statement or conclusion to the effect that the charges are either false or not supported by the true facts;

2. The charges are not sustained, i.e. a statement or conclusion to the effect that there is insufficient evidence or such conflicting evidence that the Police Commission cannot determine whether the charges were true or not;
3. The acts occurred but the officer was justified in his conduct and is therefore exonerated, i.e. a statement or conclusion to the effect that the acts or conduct on the part of the officer did in fact occur but that it was not improper under the circumstances or there was lawful justification;
4. The charges are sustained, i.e. a statement or conclusion to the effect that the act or conduct on the part of the officer did occur without any lawful justification. This conclusion should further state whether the acts were a violation of some specific section of the criminal code or that it was misconduct on the part of the officer.

Finally, there should be a written conclusion which includes any punishment recommended by the Police Commission. The wording of the conclusion may be as follows:

It is the decision of the Police Commission that Officer (name) is ("guilty" or "not guilty") of the charges filed against him.

It is further the decision of the Police Commission that ("the action is dismissed") or ("the officer is to be disciplined as follows").

The discipline authorized by section 7-32-4160, MCA, includes discipline, suspension, removal, or discharge. If discipline is to be carried out, the Commission should spell out how it is to be done. If punishment is suspension, the decision should mention whether it is to be with or without pay and for what length of time. The final statement of the written decision should refer the decision to the mayor for his review and execution.

When the decision has been dated and signed by the members of the Police Commission, it must be filed with the city clerk as required by section 7-32-4160, MCA. A copy of the decision should be given to the charged officer, the mayor, and the complaining party.

The mayor has five days after the decision is filed to veto or modify it, and to file the veto or modifications with the city clerk. If the Police Commission finds the officer not guilty, the mayor does not have the right to change that decision. The mayor does have the right to change a guilty decision to not-guilty or reduce or increase the punishment imposed. The Mayor must make any changes to the Commission decision in writing and must state the reasons for the changes, all of which must be filed with the city clerk. Section 7-32-4161, MCA, requires the mayor to enforce the Commission's final decision or the modified decision.

O. DISTRICT COURT REVIEW

The accused officer may appeal a Police Commission decision to the district court within 60 days after the decision or the mayor's changes are filed with the city clerk.

PART VI
FORMS FOR USE BY THE POLICE COMMISSION

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Certificate of Qualification of Applicants Form

BEFORE THE POLICE COMMISSION, CITY OF _____

IN THE MATTER OF THE EXAMINATION OF
APPLICANTS FOR THE POLICE FORCE.

TO: THE CHIEF EXECUTIVE OF THE ABOVE NAMED CITY.

At your request and pursuant to section 7-32-4154, MCA, we have examined the applicants for the City Police Force whose names were submitted to us by you. We find the following applicants qualified and certify that each has passed the examination as required by section 7-32-4108, MCA. We further certify that the applicants meet the residency requirements of section 7-32-301, MCA, and meet the standards promulgated by the Board of Crime Control pursuant to section 7-32-303, MCA.

This certificate issued and effective this _____ day of _____, 19____.

Chair, Police Commission

Member

Member

Notice to Persons Wishing to Make Misconduct Charges Against a Police Officer Form

INFORMATION FOR CHARGING MISCONDUCT ON THE PART OF A POLICE OFFICER:

Please read the following INSTRUCTIONS and proceed accordingly.

Where a complaint may be made

A complaint may be made to:

1. The Chief of Police or Chief Executive of the Municipality
2. The Police Commission
3. The County Attorney

Complaints to the Chief of Police or Chief Executive

Section 7-32-4105, Montana Codes Annotated, makes it the duty of the chief of police to control all police officers. Section 7-32-4103, MCA, gives the chief executive of a municipality supervision of a police department. Section 7-32-4163, MCA, gives the chief of police or chief executive power to discipline an officer by suspending that officer for a maximum of ten days with or without pay.

A complaint made to a chief of police or chief executive may be referred to the Police Commission.

Complaints to the Police Commission

Section 7-32-4156, MCA, requires that every complaint presented to the Police Commission be in writing. A form is available for that purpose and will be provided upon request.

The Police Commission consists of three citizens who have been appointed by the chief executive and it is their duty to hear, try, and decide all charges brought by any person against a member of the police department. Police Commission members are not members of the police department.

If written charges are filed with the Police Commission, the Commission may refer the charges to the County Attorney or the Sheriff for preliminary investigation. If the investigation results in a finding of probable cause to believe the officer acted in an improper manner, then the Police Commission will set a time and place for a hearing of the charges. The person making the complaint and the officer involved will each be notified and each will have the right to be present at the hearing with an attorney, if desired, and to give testimony and to call witnesses.

Complaints to the County Attorney

If the person making the complaint believes the police officer has committed a criminal offense, the complaint may be made to the County Attorney.

Complaint Against a Police Officer Form

COMPLAINT AGAINST A POLICE OFFICER

I request that this complaint be referred to and handled by:

- The Chief of Police
- The Chief Executive of the Municipality
- The Police Commission
- The County Attorney

**-----
COMPLAINT**

Name of Officer: _____

Name and Address of Complainant: _____

Phone Number: _____

Time of Incident: _____

Place Where Occurred: _____

Name and Address of Witnesses: _____

(Use reverse side if needed)

Statement of Facts. (The basis for the charge) (Use reverse side if needed)

I certify that the above information and statement of facts are true and correct.

Dated this _____ day of _____, 19 _____.

Signature of Complainant

Witness to Signature

Notice of Hearing Form

BEFORE THE POLICE COMMISSION, CITY OF _____

To the above named Officer:

A complaint alleging misconduct has been filed against you. A copy of which is attached to this notice.

A hearing before the Police Commission is set for _____, 19_____, at the hour of _____. The hearing will be held at _____.

WRITTEN RESPONSE REQUIRED. You are hereby notified that at least five days before the above hearing date you must file a written response to the allegations contained in the attached complaint. You may file the response either with your Chief of Police or the Police Commission.

YOUR RIGHTS. Section 7-32-4157 of the Montana Code gives you the right to be represented at the hearing by an attorney of your choice as well as the right to be heard and bring witnesses to testify on your behalf. You may appeal a final decision to the district court.

FINAL DECISION. If the charges are proven true to the satisfaction of the Police Commission, you may be disciplined, suspended, removed, or discharged from your position on the police force, subject to veto or modification of the chief executive of the municipality.

Dated this _____ day of _____, 19 _____.
[Handwritten signature]

Chair, Police Commission

Certificate of Service Form

BEFORE THE POLICE COMMISSION, CITY OF _____

IN THE MATTER OF THE CHARGES FILED)
)
AGAINST _____)

Certificate of Service

I hereby certify that I served the above named Police Officer with the attached NOTICE and a copy of the COMPLAINT filed against him in this matter.

Service was made at _____
at the hour of _____, on the _____ day of _____, 19____.

Dated this _____ day of _____, 19____.

Signature

Application for Subpoena Form

BEFORE THE POLICE COMMISSION, CITY OF _____

IN THE MATTER OF THE CHARGES FILED)

AGAINST _____)

APPLICATION FOR SUBPOENA

Comes now _____
on behalf of _____ and requests the
Police Commission to issue a subpoena directing _____
to appear at the hearing before the Police Commission on the _____
day of _____, 19 _____ at _____
along with the following items: _____

The reason for this request and application is: _____

Dated this _____ day of _____, 19 _____.

Signature

Subpoena Form

BEFORE THE POLICE COMMISSION, CITY OF _____

IN THE MATTER OF THE CHARGES FILED

AGAINST _____

S U B P O E N A

TO: _____

You are hereby commanded to appear before the above named Police Commission at _____
in the City of _____, Montana, on the _____ day of _____, 19____ at _____, to testify in the above entitled matter. Your failure to obey this Subpoena will be punished in the same manner as contempt of the District Court.

Dated this _____ day of _____, 19 _____.

Police Commission Chair

Return of Service:

I certify that I served this Subpoena on the party to whom it was addressed and left that person a copy on the _____ day of _____, 19 _____.

Subpoena Duces Tecum Form

BEFORE THE POLICE COMMISSION, CITY OF _____

IN THE MATTER OF THE CHARGES FILED

AGAINST _____

SUBPOENA DUCES TECUM

TO: _____

You are hereby commanded to appear before the above named Police Commission at _____ in the City of _____, Montana, on the _____ day of _____, 19____ at _____, to testify in the above entitled matter. Your failure to obey this Subpoena will be punished in the same manner as a contempt of the District Court. You are further commanded to bring with you the following items: _____

Dated this _____ day of _____, 19_____.

Chair, Police Commission

Return of Service

I certify that I served this Subpoena Duces Tecum on the party to whom it is addressed and left that person a copy on the _____ day of _____, 19____.

PART VII STATUTES

THE POLICE COMMISSION

7-32-4151. Police Commission required in all cities and some towns. (1) In all cities and some towns, the mayor, or the manager in those cities operating under the commission-manager plan, shall nominate and, with the consent of the city council or commission, appoint three residents of such city or town who shall have the qualifications required by law to hold a municipal office therein and who shall constitute a board to be known by the name of "police commission".

(2) This section shall apply to organized police departments in every city and town of the state which have three or more full-time law enforcement officials, regardless of the form of government under which said city or town may be operating or may at any time adopt.

7-32-4152. Term and compensation of members of police commission. (1) The appointees to the police commission shall hold office for 3 years, and one such member must be appointed annually at the first regular meeting of the city council or commission in May of each year. However, a member serving on the commission during the hearing or deciding of a case under 7-32-4155 shall continue to serve on the commission for that case until a decision has been made; a new member may not sit on the commission for such business.

(2) The compensation of the members of such board shall be fixed by the city council or commission, not to exceed \$10 per day or more than \$50 per month for any month for each member in cities of the first and second class.

7-32-4153. Meaning of word mayor. Wherever the word "mayor" is used in 7-23-4109 and 7-32-4160 through 7-32-4163, it is intended to include "city manager", "city commissioner", or any other name or designation used to identify or designate the chief executive of any city or municipality.

7-32-4154. Role of police commission in examination of applicants for police force. It shall be the duty of the police commission to examine all applicants whose applications have been referred to the commission as to their age, legal, mental, moral and physical qualification and their ability to fill the office as a member of the police force. It shall be the duty of the police commission, subject to the approval of the mayor, to make such rules regarding such examinations not inconsistent with this part of the laws of the state.

7-32-4155. Role of police commission in hearing and deciding charges against policemen. (1) The police commission shall have the jurisdiction and it shall be its duty to hear, try, and decide all charges brought by any person or persons against any member or officer of the police department, including any charge that such member or officer:

(a) is incompetent or has become incapacitated, by age, disease, or otherwise, to discharge the duties of his office;

(b) has been guilty of neglect of duty, of misconduct in his office, or of conduct unbecoming a police officer;

(c) has been found guilty of any crime; or

(d) whose conduct has been such as to bring reproach upon the police force.

(2) It is the duty of the police commission, at the time set for hearing a charge against a police officer, to forthwith proceed to hear, try, and determine the charge according to the rules of evidence applicable to courts of record in the state.

7-32-4156. Charges to be in writing. Any charge brought against any member of the police force must be in writing in the form required by the police commission, and a copy thereof must be served upon the accused officer or member at least 15 days before the time fixed for the hearing of such charge.

7-32-4157. Rights of accused policeman. The accused shall have the right to be present at the trial in person and by counsel and to be heard and to give and furnish evidence in his defense.

7-32-4158. Police commission trials open to public. All trials shall be open to the public.

7-32-4159. Subpoena authority of police commission. The chairman or acting chairman of the police commission shall have power to issue subpoenas, attested in its name, to compel the attendance of witnesses at the hearing, and any person duly served with a subpoena is bound to attend in obedience thereto. The police commission shall have the same authority to enforce obedience to the subpoena and to punish the disobedience thereof as is possessed by a judge of the district court in like cases; provided, however, that punishment for disobedience is subject to review by the district court of the proper county.

7-32-4160. Decision by police commission - veto power of mayor. (1) The police commission must, after the conclusion of the hearing or trial, decide whether the charge was proven or not proven and shall have the power, by a decision of a majority of the commission, to discipline, suspend, remove, or discharge any officer who shall have been found guilty of the charge filed against him.

(2) Such action of the police commission shall, however, be subject to modification or veto by the mayor, made in writing and giving reasons therefor, which shall become a permanent record of the police commission; provided, however, that where and when the police commission decides the charge not proven, the decision is final and conclusive and is not subject to modification or veto by the mayor or to any review.

(3) Where the police commission decides the charge proven, the mayor, within 5 days from the date of the filing of such findings and decision with the city clerk, may modify or veto such finding and decision.

7-32-4161. Enforcement of decision. When a charge against a member of the police force is found proven by the board and is not vetoed by the mayor, the mayor must make an order enforcing the decision of the board or the decision as modified if modified by the mayor. Such decision or order shall be subject to review by the district court or the proper county on all questions of fact and all questions of law.

7-32-4162. Hearing required prior to dismissal of policeman. In no case shall any officer or member of the police force be discharged without a hearing or trial before the police commission as provided in 7-32-4155 in all cities of the first class, all cities of the second class, any and all cities having a duly and regularly appointed, qualified, and acting police commission, and all cities and municipalities functioning under the commission form, city manager plan, or a mayor.

7-32-4163. Temporary suspensions. The mayor, or chief of police, subject to the approval of the mayor, shall have the power in all cases to suspend a policeman or any officer for a period of not exceeding 10 days in any one month, such suspension to be with or without pay as the order of suspension may determine. Any officer suspended, with or without pay, is entitled to appeal such suspension to the police commission.

7-32-4164. District Court review. The district court of the proper county shall have jurisdiction to review all questions of fact and all questions of law in a suit brought by any officer or member of the police force, but no suit to review such hearing or trial or for reinstatement to office shall be maintained unless the same is begun within a period of 60 days after the decision of the police commission or order of the mayor has been filed with the city clerk.

QUALIFICATIONS OF LAW ENFORCEMENT OFFICERS

7-32-301. Residency requirements. No sheriff of a county, mayor of a city, or other person authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance shall hereafter appoint as such special deputy, marshall, or policeman any person who shall not have resided continuously in this state for a period of at least 1 year and in the county where such appointment is made for a period of at least 6 months prior to the date of said appointment.

7-32-302. Waiver of residency requirements. The person or body authorized by law to appoint special deputies, marshals, or policemen may in its discretion waive residency requirements.

7-32-303. Peace officer employment, education, and certification standards. (1) For purposes of this section, unless the context clearly indicates otherwise, "peace officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.

(2) No sheriff of a county, mayor of a city, board, commission, or other person authorized by law to appoint peace officers in this state shall appoint any person as a peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the Board of Crime Control:

- (a) be a citizen of the United States;
- (b) be at least 18 years of age;
- (c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;
- (d) not have been convicted of a crime for which he could have been imprisoned in a federal or state penitentiary;
- (e) be of good moral character, as determined by a thorough background investigation;
- (f) be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;
- (g) be examined by a licensed physician, who is not the applicant's personal physician, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect performance by the applicant of the duties of a peace officer;

(h) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to the accomplishment of the duties and functions of a peace officer; and

(i) possess or be eligible for a valid Montana driver's license.

(3) At the time of appointment a peace officer must take a formal oath of office.

(4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written notice thereof must be given to the Board of Crime Control by the employing authority.

(5) (a) Except as provided in subsections (b) and (c) of this subsection, it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by the Board of Crime Control. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(b) A peace officer who has been issued a basic certificate by the Board of Crime Control and whose last date of employment as a peace officer was less than 36 months prior to the date of his present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (5)(a). If such last peace officer's last date of employment as a peace officer was 36 or more but less than 60 months prior to the date of his present employment as a peace officer, he may satisfy his basic educational requirements as set forth in subsection (5)(c).

(c) A peace officer under the provisions of subsection (5)(b) or a peace officer who has completed a basic peace officer's course in another state and whose last date of employment as a peace officer was less than 60 months prior to the date of his present appointment as a peace officer may, within 1 year of his present employment or initial appointment as a peace officer within this state, satisfy his basic educational requirements by successfully passing a basic equivalency test administered by the Montana Law Enforcement Academy and successfully completing a legal training course conducted by the academy. If the peace officer fails the basic equivalency test, he must complete the basic course within 120 days of the test.

(6) The Board of Crime Control may extend the 1-year time requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances which make the extension necessary. Factors which the board may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of his immediate family, absence of reasonable access to the basic course or the legal training course, and an unreasonable shortage of personnel within the department. The board may not grant an extension to exceed 180 days.

(7) A peace officer who has successfully met the employment standards and qualifications and the educational requirements of this section and who has completed a 1-year probationary term of employment shall, upon application to the Board of Crime Control, be issued a basic certificate by the board, certifying that the peace officer has met all the basic qualifying peace officer standards of this state.

7-32-304. Exception for organizing posse. The provisions of this part shall not apply in cases of the officers listed in 7-32-301 summoning a posse forthwith to quell public disturbance or domestic violence.

MUNICIPAL POLICE FORCE

7-32-4101. Police department authorized and required. There shall be in every city and town of this state a police department which shall be organized, managed, and controlled as provided in this part.

7-32-4102. Applicability of part. (1) This part shall in all respects be applicable to and shall govern and control police departments in every such city or town organized under any form of municipal government except where this part is in conflict with the commission form of government provided for in part 42 of chapter 3 and amendments thereto.

(2) Where the provisions of this part do conflict with the provision of said part 42 and the amendments thereto pertaining to the commission form of government, the provisions pertaining to the commission form of government shall prevail.

7-32-4103. Supervision of police department. In all cities and towns, the mayor, or the manager in those cities operating under the commission-manager plan, shall have charge of and supervision over the police department thereof. He shall appoint all the members and officers thereof. Subject to the provisions of this part, he shall have the power to suspend or remove any member or officer of the force. He shall make rules, not inconsistent with provisions of this part, the other laws of the state, or the ordinances of the city or town council, for the government, direction, management, and discipline of the police force.

7-32-4104. Additional regulations by city council. In addition to the provisions herein contained, the city or town council may make any ordinances, not inconsistent with this part or any law of the state, for the government of the police department and for regulating the powers and duties of its officers and members.

7-32-4105. Duties of chief of police. (1) It is the duty of the chief of police:

(a) To execute and return all process issued by the city judge or directed to him by any legal authority and to attend upon the city court regularly;

(b) to arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance and bring them before the city judge for trial;

(c) to have charge and control of all policemen, subject to such rules as may be prescribed by ordinance, and to report to the council all delinquencies or neglect of duty or official misconduct of policemen for action of the council;

(d) to perform such other duties as the council may prescribe.

(2) The chief of police has the same powers as a constable in the discharge of his duties, but he must not serve a process in any civil action or proceeding except when a city or town is a party.

7-32-4106. List of active and eligible policemen. (1) The city council shall have absolute and exclusive power to determine and limit the number of police officers and members to comprise the police force of any city, to reduce the number of the police force at any time, and to divide the police membership into two lists:

(a) one an active list, who are to be actually employed and receive pay while so employed; and

(b) one an eligible list, who shall not receive pay while not actually employed as an officer or member.

(2) Officers or members of the active list temporarily relieved from duty shall become members of the eligible list without pay and shall be first entitled to reinstatement on the active list in case of vacancy, according to their seniority in the service, and all others on the eligible list shall be entitled to fill a vacancy in the order of their appointment.

(3) Such action of the council shall not be subject to review by any court.

(4) In no event shall there be any officers or members placed on the eligible list, except in case of temporary reduction of the police force, when the number already on the eligible list shall equal in number 20% of the active list.

7-32-4107. Utilization of retired officers. Policemen or officers on the retired list of any city or town of this state shall retire from the active list of police officers of such city or town but shall be subject to call for police service or active duty whenever an emergency shall require or the active list be temporarily insufficient for proper policing of such city or town, all under the rules as the board of police commissioners or city council shall prescribe.

7-32-4108. Appointment to police force. All appointments to the police force must be appointed by the mayor, or the manager in those cities operating under the commission-manager plan, and confirmed by the city council or commission. No such appointment must be made until:

(1) an application for such position on the police force has been filed with the mayor, or the manager in those cities operating under the commission-manager plan, and referred by him to the police commission, where such commission exists; and

(2) such applicant has successfully passed the examination required to be held by such police commission and a certificate from such police commission that the applicant has qualified for such appointment has been filed with the mayor, or the manager in those cities operating under the commission-manager plan.

7-32-4109. Temporary employment for persons doing police work. The mayor of any city shall have the power and authority, at any time when he deems it expedient, to employ not to exceed two persons at one time for a period not to exceed 30 days to do police duty who are not members of the police department.

7-32-4110. Procedure for reinstatement on police force. (1) An applicant for a position on the police force who has already served 20 years or more in the aggregate on the police force of the city or town to which he is applying for reinstatement may make application within 1 year from the date on which his name was removed from the active list of police officers to the police commission of that city or town wherein he last served, and his application must be considered by said police commission within 30 days after receipt of said application.

(2) Said commission shall not require the applicant to have a physical examination or other examination required of applicants for a position on the police force; and in the event that the police commission recommends the reinstatement of said applicant as a member of the police force, the probationary term required of applicants for positions shall be dispensed with as to such applicant for reinstatement. It shall be the duty of the mayor to submit to the city council of said city at its next regular meeting the recommendation of the police commission; and in the event that a majority of the city council vote in favor of adopting the recommendation of the commission, said applicant shall be immediately reinstated as a police officer in said city or town.

7-32-4111. Examination of applicants for position on police force. (1) All applicants for positions on the police force whose applications shall have been referred to the police commission shall be required to successfully undergo an examination before the police commission and to receive a certificate from said commission that the applicant is qualified for such appointment for the probationary period upon the police force.

(2) Any applicants who shall make any false statement to the police commission as to his age or other required qualifications at his examination before the police commission shall be subject to suspension or dismissal from the police force after trial.

7-32-4112. Qualifications of policemen. (1) The members of the police department on the active list of any city at the time of their appointment under this part may not be less than 18 years of age or more than 35 years of age, but this restriction does not apply to any member of any police department as of July 2, 1973, to honorably discharged persons who served in the armed forces of the United States in time of war, providing such time of service is not less than 3 months, or to applicants for reinstatement under 7-32-4110.

(2) A police officer must be a citizen of the United States and meet the minimum qualifying standards for employment promulgated by the board of crime control.

7-32-4113. Probationary period and confirmation of appointment. (1) Every applicant who has passed the examination and received the certificate referred to in 7-32-4108 must first serve for a probationary term of not more than 1 year. At any time before the end of such probationary term, the mayor, or the manager in those cities operating under the commission-manager plan, may revoke such appointment.

(2) After the end of such probationary period and within 30 days thereafter, the appointment of such applicant must be submitted to the city council or commission, and if such appointment is confirmed by the city council or commission, such applicant becomes a member of the police force and shall hold such position during good behavior unless suspended or discharged as provided by law.

7-32-4114. Restrictions on activities of policemen. (1) No member of the police force may hold any other office or be employed in any other department of the city or town government.

(2) The fact that a person is an officer or member of the police department does not deprive his spouse or any member of his family of the right to participate in political activity or to hold public or political office.

(3) An officer or member of the police department may participate in political activity provided he does not do so while on duty or in uniform or that it does not otherwise interfere with the performance of his duties.

7-32-4115. Exemptions of members of police force. No member of the police force shall be liable to military or jury duty or to arrest on civil process while actually on duty.

7-32-4116. Minimum wage of police in first- and second-class cities. (1) Each duly confirmed member of a police department of cities of the first and second class of Montana is entitled to a minimum wage for a daily service of 8 hours' work of at least \$750 per month for the first year of service and thereafter at least \$750 a month plus 1% of the minimum base monthly salary of \$750 for each additional year of service up to and including the 20th year of additional service.

(2) This section applies to cities and towns not of the first class which have elected to come under the provisions of Chapter 120, Laws of 1929, as amended, or Chapter 335, Laws of 1974, as amended.

(3) Added salary for years of service will be based on the base monthly salary as established in this section and not on the actual current salary.

7-32-4117. Group insurance for policemen - funding. (1) Cities of all classes, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

(a) provide the same insurance to their respective policemen;

(b) notwithstanding Title 2, chapter 18, part 7, pay no less than the premium rate in effect as of July 1, 1980, for insurance coverage for policemen and their dependents;

(c) provide for collective bargaining or other agreement processes to negotiate additional premium payments beyond the amount guaranteed by subsection (1)(b).

(2) Incompliance with 1-2-112, the administration of this section is declared a public purpose of a city, which may be paid out of the general fund of the governing body and financed by a levy not to exceed 2 mills on the taxable value of property within the city or town.

7-32-4118. Work period - days off duty without loss of compensation. (1) The chief of police may establish the work period for officers and other personnel in the department and may establish a work period other than that provided in 39-3-405 for determining when an employee must be paid overtime compensation. The total hours in all work periods in a calendar year may not exceed 2,080.

(2) Each officer or other employee of the police force in every city of the first and second class shall, in each calendar year, be given a minimum of 104 days off duty without loss of compensation, not including holidays, sick leave, vacation leave, or other types of compensated time off duty.

7-32-4119. Overtime compensation. Members of police departments of cities of the first and second class, except those officers holding the rank of captain or above, are entitled to compensation for hours worked in excess of the work period established by the chief of police under 7-32-4118.

7-32-4120. Expenditure of state payments by municipality not having police retirement system - annual report. (1) As used in this section, "employee" means a person employed by a municipal police department, including police officers.

(2) A city or town not governed by the provisions of chapter 9 or 10 of Title 19 shall only expend the payment received pursuant to 19-10-305 for police department employee training, for equipment and personnel relating to substance abuse enforcement, or to purchase pensions for employees of its police department.

(3) The city treasurer or town clerk of the cities or towns shall, on or before April 1 of each year, report to the state auditor as to the expenditures of all funds received pursuant to 19-10-305.

7-32-4121. Action to recover salary. (1) Actions to recover salaries by members of the police departments of cities must be commenced within 6 months after the cause of action shall have accrued.

(2) No action for unpaid salary can be maintained by members of the police department of cities except for service actually rendered and, if suspended or placed on the eligible list, then only for the days the member of the police department reports for duty.

(3) The word "action", as used in this section, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

7-32-4122. Contributions for group life insurance and representation. (1) Unless the police protective association of the city or town chooses not to participate, as provided in 7-32-4123, and employer shall deduct from each police officer's monthly compensation, except that of a police chief, assistant chief, or captain, an amount equal to 0.5% of the base salary paid to newly confirmed police officers in the city or town. The employer shall pay this amount on a monthly basis to the treasurer of the Montana police protective association to be used to pay premiums on a group life insurance policy for contributing police officers of participating city and town associations and to defray expenses incurred by the association when representing members of the plan.

(2) An employer may not deduct the amount provided for in subsection (1) from the monthly compensation of a police chief, assistant chief, or captain unless that person notifies his employer in writing to make the deduction.

(3) A person who contributes under this section is a full member of the Montana police protective association and is entitled to all membership rights and benefits, including those benefits provided in subsection (1).

(4) For the purposes of this section, "police officer" means an officer who participates in the police officers' retirement system under Title 19, chapter 9.

7-32-4123. Nonparticipation. (1) The members of a city or town police protective association may by a vote of three-fourths of the membership cease the participation of all the members in the provision of group life insurance through salary deductions. Salary deductions for payment of group life insurance premiums and representation may not be made by the city or town of the nonparticipating association. An association may resume participation by a vote of three-fourths of the membership of the city or town police protective association.

(2) Notice of nonparticipation or resumption of participation must be provided to the governing body of the city or town and to the Montana police protective association.

7-32-4124 through 7-32-4130 reserved (i.e. no section in code).

7-32-4131. Compensation and allowance for sick or injured policemen. Whenever any member of a police department in any city or town shall, on account of sickness or disability suffered or sustained while a member of such police department and not caused or brought on by dissipation or abuse, be confined to any hospital or his home and shall require medical attention and care, the officer of such police department may be allowed, by the city council, his salary as such police officer during his absence and an amount equal to his expenses while confined for such injury or sickness.

7-32-4132. Payment of partial salary amount of officer injured in performance of duty. A member of a municipal law enforcement agency of a first- or second-class municipality who is injured in the performance of his duties so as to necessitate medical or other remedial treatment and render him unable to perform his duties shall be paid by the municipality by which he is employed, the difference between his full salary and the amount he receives from workers' compensation until his disability has ceased, as determined by worker's compensation, or for a period not to exceed 1 year, whichever shall first occur.

7-32-4133. Repealed.

7-32-4134. Repealed.

7-32-4135. Discontinuation of salary when retirement allowance granted. Payment of a regular salary under 7-32-4132 shall be discontinued if the officer is disabled for an undetermined duration and is granted a disability retirement allowance under Title 19, chapters 9 and 10. If an application for such a retirement allowance is not made by the officer, application therefore may be made by the chief executive officer of the municipality by which such officer is employed.

7-32-4136. Assignment to light duty or another agency. (1) Whenever, in the opinion of the municipality, supported by a physician's opinion, the officer is able to perform specified types of light police duty, payment of his partial salary amount under 7-32-4132 shall be discontinued if he refuses to perform such light police duty when it is available and offered to him. Such light duty shall be consistent with the officer's status as a law enforcement officer.

(2) With his consent, the officer may be transferred to another department or agency within the municipality.

7-32-4137. Effect on probationary status. If the injured officer is on probationary status at the time he becomes injured, the balance of his probationary time shall be suspended until he returns to regular duty or is discharged for cause.

7-32-4138. Subrogation. The municipality has a cause of action for reimbursement of sums it has paid to an officer as salary and for medical treatment against any third party against whom the officer has a cause of action for the injury which necessitated the payments by the municipality.

DISABILITY RETIREMENT

19-10-402. Eligibility for disability retirement. When a police officer receives injuries or disabilities in the active discharge of his duties as a police officer, which injuries or disabilities are, in the opinion of the board of police commissioners or city council of the city or town, of such character as to impair his ability to discharge his duties as an active police officer, he shall be placed on the retired list of the city or town.

PART VIII
SUMMARIES OF RECENT MONTANA SUPREME COURT DECISIONS
CONCERNING POLICE COMMISSIONS

McCracken v. City of Chinook, 788 P.2d 892, 242 Mont. 21 (1990)

Police officers who resigned voluntarily could not maintain an action against the city for wrongful discharge. A police officer must be legally discharged before bringing a wrongful discharge action, and legal discharge does not occur until an officer has had a hearing before the police commission. §7-32-4162, MCA.

Gentry v. City of Helena, 773 P.2d 309, 237 Mont. 353 (1989)

Upon review of a police commission decision modified by the city manager to order discharge of officers who were found to be dishonest in connection with reports of their intoxication and misconduct, the district court may determine whether the decision of the Commission, as modified, is supported by substantial evidence, but may not determine the disciplinary measures that may be taken against the officers. If the district court decision is appealed to the Montana Supreme Court, the police commission's findings and the court's decision will not be overturned unless they are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

This decision also held that: a city manager may testify against officers at a hearing in spite of the fact that the city manager is in a position to modify or veto the commission decision; the results of a polygraph examination should not be introduced as evidence before a police commission; although a 20 1/2 hour non-stop hearing before a police commission is inordinately long, it is permissible so long as no prejudice to the officers results; a complaint against police officers must be in writing but the law does not require that it be signed by the complaining party.

City/County of Butte-Silver Bow v. Montana State Board of Personnel Appeals, 732 P.2d 835, 225 Mont. 286 (1987)

The collective bargaining agreement between an officer and the City of Butte did not provide the officer an administrative remedy for grieving termination beyond that provided in the police commission statutes.

Matter of Raynes, 698 P.2d 856, 215 Mont. 484 (1985)

Where there was substantial evidence brought forth at a hearing before the police commission on charges that an officer had made sexual advances towards women he was treating with hypnosis, the commission correctly found that the officer's right of privacy did not extend to all of his off-duty conduct. The State has an interest preserving the integrity of the police department that overrides the officer's right to privacy.

Because there were many legal issues that arose during the police commission hearing, the commission hired a private attorney to act as hearing examiner. The hearing examiner ruled that the accused officer had no right to information about any disciplinary cases involving officers whom the city planned to call as witnesses since that information was irrelevant, and the Montana Supreme Court agreed. The Court also ruled that termination of employment of the officer was not excessive punishment, considering the nature of his conduct.

Raynes v. City of Great Falls, 696 P.2d 423, 215 Mont. 114 (1985).

The District Court was correct in concluding that under a commission-manager form of government, the city manager, and not the commissioner designated as mayor, is the chief executive of the city and the only official with power to review, affirm, modify or veto the decision of the police commission to discharge a police officer.

Oberg v. City of Billings, 674 P.2d 494, 207 Mont. 277 (1983)

An officer who was being investigated refused to submit to a polygraph test, and the police commission ordered him temporarily removed from duty for refusing to take the test. The Montana Supreme Court held that the statute which permitted public law enforcement agencies to require their employees to take a polygraph examination, while prohibiting such test for other kinds of employees, was found to be an unconstitutional violation of equal protection. §39-2-304, MCA. (NOTE: Existing law permits blood and urine testing of employees whose primary responsibility is security or public safety.)

Dewar v. City of Great Falls, 582 P.2d 1171, 178 Mont. 21 (1978)

Members of a police commission whose terms had expired but whose successors had not yet been appointed and qualified had jurisdiction to receive and hear a complaint against a police officer.

Miskovich v. City of Helena, 551 P.2d 995, 170 Mont. 138 (1976)

The Montana Administrative Procedure Act (MAPA) does not apply to the administrative functions of police commissions because MAPA applies to state agencies, and police commissions are creatures of municipal government.

District courts may review decisions of police commissions on all questions of fact and law. Reviewing the law means ascertaining whether the commission's rulings on the law are correct. Reviewing the facts means determining whether substantial evidence exists in the record to support the commission's findings.

Substantial evidence did not exist to support the police commission's finding that an officer used excessive force in making arrests, where the evidence showed that the prisoners were actually resisting arrest; thus, the district court had authority to order reinstatement of the officer.

A member of the police commission who is absent from a portion of a disciplinary hearing should not be allowed to participate in the final decision in the case.

Matter of Dewar, 548 P.2d 149, 169 Mont. 437 (1976)

The power of a police commission to compel testimony at a hearing is subject to the same restrictions as those that guide a district court.

Steer v. City of Missoula, 547 P.2d 843, 169 Mont. 389 (1976)

The rules of criminal procedure do not apply to the filing of charges with a police commission.

City of Helena v. District Court, 530 P.2d 464, 166 Mont. 74 (1975)

When a decision of a police commission is reviewed by a district court, the accused officer is not entitled to a jury trial.

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